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<b>DOCKET</b> <b>08-AFC-5</b>
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DATE	<u>MAY 13 2010</u>
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May 13, 2010

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-5  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Re: Imperial Valley Solar, LLC; Docket 08-AFC-5

Dear Docket Clerk:

Enclosed are an original and one copy of CURE's May 13, 2010 letter re: Imperial Valley Solar Project Testimony Concerning New Water Supply. Please process the document and return a conformed copy in the envelope enclosed.

Thank you for your assistance.

Yours truly,

/s/

Loulena A. Miles

LAM:bh  
Enclosures

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May 13, 2010

Jeffrey D. Byron, Presiding Member  
California Energy Commission  
1516 Ninth Street, MS-15  
Sacramento, CA 95814

Anthony Eggert, Commissioner  
California Energy Commission  
1516 Ninth Street, MS-15  
Sacramento, CA 95814

Raoul Renaud, Hearing Officer  
California Energy Commission  
1516 Ninth Street, MS-15  
Sacramento, CA 95814

Re: Imperial Valley Solar Project Testimony Concerning New Water Supply

Dear Commissioner Byron, Commissioner Eggert and Hearing Officer Renaud:

Imperial Valley Solar, LLC, filed a Supplement to the Application for Certification ("AFC Supplement") for the Imperial Valley Solar, formerly SES Solar Two ("Project") on May 6, 2010. This AFC Supplement contains information and analysis for a newly identified water source that would potentially be used as the **only** water supply for construction and operation of the Project. This is the first time that the Applicant has disclosed **any** information, other than the name of the purveyor. Staff has not conducted **any** analysis of the new water source.

In our March 24, 2010, pre-hearing conference statement, we alerted the Committee to the need for the Staff to prepare an assessment of the Applicant's proposed water source. The Staff has not prepared this assessment in the interim because the Applicant did not file the underlying environmental information until May 6, 2010, one month after the date that the Applicant had indicated the information would be provided.<sup>1</sup>

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<sup>1</sup> At the pre-hearing conference, the Applicant explained that it would submit information on a completely new water supply for the Project "on or before April 5, 2010." See transcript page 51 at [http://www.energy.ca.gov/sitingcases/solartwo/documents/2010-03-25\\_Transcript.pdf](http://www.energy.ca.gov/sitingcases/solartwo/documents/2010-03-25_Transcript.pdf).

CURE submitted a notice on May 10, 2010 that testimony regarding the new water supply would be submitted after CURE has reviewed the Staff Assessment of the new water supply. This Staff Assessment is required by the Commission's regulations, in 20 CCR § 1742.5.

In an email today, Hearing Officer Renaud responded to CURE's May 10, 2010 notice indicating that all parties should respond to the May 6, 2010 supplement to the AFC by May 17, 2010, reasoning:

“a good deal of information on the alternative water supply has been available for some time, and its May 6, 2010 information, although filed after Applicant stated it would be filed, is neither lengthy nor complex. Furthermore, Applicant timely filed its opening testimony on Water on May 10, as required by the schedule. CURE has the same amount of time as the other parties to file any rebuttal to it.”

This statement is wrong on the facts and on the law. First, the Applicant's AFC Supplement filed on May 6, 2010 consists of **1,023 pages** of technical information primarily about the new water supply and related impacts.<sup>2</sup> The AFC Supplement was so large that it had to be divided into **five separate emails**. For comparison, the entire Staff Assessment is only 1,571 pages. No information had previously been available regarding this water supply, except for the supplier's name, place of business and anticipated amount of water use. The May 6, 2010 AFC Supplement is in fact lengthy and complex, and was not available before May 6, 2010.

Second, the Commission Staff is legally obligated to review this information and provide a report at least **14 days before hearings**. The Commission's Rules of Practice and Procedure, as codified in the California Code of Regulations, 20 CCR §§ 1742.5 & 1747, direct the Staff to review the information provided by the Applicant, conduct an environmental assessment and issue a report at least 14 days before hearings:

(a) The staff shall review the information provided by the applicant and other sources and assess the environmental effects of the applicant's proposal, the

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<sup>2</sup> See Attachment A: Photo of AFC Supplement filed on May 8, 2010.  
2218-111a

May 13, 2010

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completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of, additional or alternative mitigation measures.

(b) The staff shall present the results of its environmental assessments in a report (or exhibit) to be offered as evidence at the hearings held under Section 1748.

At least 14 days before the start of the evidentiary hearings pursuant to section 1748 or at such other time as required by the presiding member, the staff shall publish the reports required under sections 1742.5, 1743, and 1744 as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy.

No such Staff Assessment has been prepared. In fact, it would have been impossible for Staff to have prepared this report since the information was just submitted by the applicant last week. Moreover, the information in the AFC Supplement is central to the evaluation of this Project. The Applicant revealed for the first time since the AFC was filed nearly two years ago that it intends to rely upon a new groundwater source from a sole source aquifer for the life of the Project.

We understand that the Commission feels a political imperative to proceed with its preordained schedule. However, the Commission must nevertheless comply with the law and regulations. We trust that the Committee will promptly establish a new schedule for considering the Applicant's proposed new water source for the Project which provides for an opportunity for the Staff to provide their analysis in a Staff Assessment, an opportunity for comments and responses on that Staff Assessment and testimony and hearings, as is required by the Commission's regulations.

Sincerely,

/s/

Loulena A. Miles

LAM:bh  
Attachment

2218-111a

May 13, 2010  
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cc: Karen Douglas, Chair, California Energy Commission  
James D. Boyd, Vice Chair, California Energy Commission  
Robert Weisenmiller, Commissioner, California Energy Commission  
Docket Office  
Service List

## Attachment A



May 13, 2010  
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**STATE OF CALIFORNIA**  
**California Energy Commission**

In the Matter of:

The Application for Certification  
for the IMPERIAL VALLEY SOLAR  
PROJECT

Docket No. 08-AFC-5

**DECLARATION OF SERVICE**

I, Bonnie Heeley declare that on May 13, 2010, I served and filed copies of the attached CURE's May 13, 2010 letter re: Imperial Valley Solar Project Testimony Concerning New Water Supply. The original document, filed with the Docket Office, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: <http://www.energy.ca.gov/sitingcases/solartwo>.

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Office via email and overnight mail.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed at South San Francisco, California on May 13, 2010.

/s/

\_\_\_\_\_  
Bonnie Heeley

CALIFORNIA ENERGY  
COMMISSION  
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VIA EMAIL ONLY

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